

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROSA CARRION, surviving spouse and
heir of JOSE CARRION, deceased,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
VETERANS AFFAIRS, *et al*,

Defendants.

2:13-cv-00419-PMP-NJK

ORDER

Before the Court for consideration is Federal Defendants' fully briefed Motion to Dismiss (Doc. #13) filed August 29, 2013.

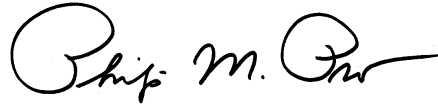
Plaintiff's wrongful death action was commenced against Federal Defendants pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 1346. As correctly argued by Federal Defendants in their Motion to Dismiss, claims under the FTCA must be brought against the United States as a Defendant. As a result, Defendants seek dismissal under Rule 12(b)(1) of the Federal Rules of Civil Procedure based upon lack of subject matter jurisdiction, and also under Rule 12(b)(6) for failure to state a claim.

The Court rejects Defendants' argument that Plaintiff has failed to state a claim as required under Rule 12(b)(6). However, finding that the United States is the proper party defendant for a claim under the FTCA, the Court grants Defendants' Motion to Dismiss

1 under Rule 12(b)(1) without prejudice and orders that Plaintiff file an Amended Complaint
2 on or before January 15, 2014 naming the United States as a Party Defendant in this action.

3 **IT IS SO ORDERED.**

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5 DATED: December 11, 2013.

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PHILIP M. PRO
United States District Judge